

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ APR 13 2010 ★

BROOKLYN OFFICE

Wayne P. Thomas,
Petitioner,

Versus,

Duke Terrell, Warden,
Respondent.

Civil Case No:
10-CV-1212(CBA)

Application
denied
for Amended

S/Judge Amon

MOTION FOR RE-CONSIDERATION OF COURT'S ORDER DATED

APRIL 1, 2010.

4/16/10

(C/M)

COMES NOW Petitioner Wayne P. Thomas, Pro-se, from Metropolitan Detention Center, Brooklyn, New York, respectfully requesting this Honorable Court to re-consider court's order dated April 1, 2010. Petitioner Wayne P. Thomas thereof states the alleges:

On or about March 8, 2010, Petitioner Wayne P. Thomas, filed his motion pursuant to 28 U.S.C. 2241 for immediate release.

On or about March 15, 2010, Petitioner Wayne P. Thomas filed a supplemental brief to his motion pursuant to 28 U.S.C. 2241, for immediate release.

Petitioner Wayne P. Thomas raised two issues as follows:

ISSUE ONE

THE DISTRICT COURT ERRED WHEN DENYING PETITIONER MOTION PURSUANT to 28 U.S.C. 2255, STATING THAT PETITIONER "CARRY A FIREARM IN RELATION TO A DRUG TRAFFICKING CRIME IN VIOLATION OF 18 U.S. 924(c)(1).

ISSUE TWO

Due to an Intervening Change of Law,
PETITIONER WAYNE THOMAS SENTENCE SHOULD HAVE BEEN CON-CURRENT, INSTEAD OF CONSECUTIVE, SEE, UNITED STATES-V WILLIAMS, 558 F.3d 166 (SECOND CIRCUIT 2009).

This court only rendered a decision on Petitioner
ISSUE ONE, and denied Petitioner motion.

This court did not rendered a decision on Petitioner
ISSUE TWO.

In, Dye-v-Hofbauer, 546 U.S. 1, 3, (2005), (Per Curiam),
Failure of a state appellate court to mention a federal claim does not mean that the claim was not presented to it." In, Dye, the petitioner's brief filed in state court clearly outlined specific allegations of prosecutorial misconduct and cited to federal constitutional provisions and supporting case laws. Id. The court held that the petitioner's claims were properly presented before the state court and directed the state court of appeals to address the claims on remand. (Remand)

Wherefore, Petitioner Wayne P. Thomas, respectfully
requesting this Honorable Court to render a decision on his ISSUE
TWO.

Respectfully Submitted,

Wayne P. Thomas

Wayne P. Thomas

(2)

Metropolitan Detention Center
WAYNE P. THOMAS 4-08-2010
Register No. 25527-037
MDC Brooklyn, Cadre
Post Office Box 329002
Brooklyn, New York 11232

CC: Duke Terrell, Warden
MDC Brooklyn, Cadre